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Citations to Provisions in 1997 Reconciliation Acts Canceled Under the Line Item Veto Act

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Background

The Line Item Veto Act was enacted into law on April 9, 1996 (Public Law 104-130; 110 *Stat.* 1200-1212) and became effective on January 1, 1997. The main procedures under the act were incorporated into the Congressional Budget and Impoundment Control Act of 1974, as amended, as a new Part C of Title X (Sections 1021-1027).

The act authorizes the President to cancel any dollar amount of discretionary budget authority, any item of new direct spending, or any limited tax benefit in an act if such cancellation will reduce the deficit, not impair any essential government functions, and not harm the national interest. The President may exercise this authority only within five days of signing an act into law. If he chooses to line-item veto any provisions in an act, he must so notify Congress in a special message. Each cancellation must be separately identified by its own reference number. Congress may consider, under expedited procedures set forth in the act, special legislation to disapprove any cancellations.

At the end of July 1997, the House and Senate completed action on two reconciliation measures implementing the tax cuts and most of the deficit reduction called for in the FY1998 budget resolution (H.Con.Res. 84). The first reconciliation act, the Balanced Budget Act of 1997 (H.R. 2015), makes net reductions in direct spending of $122 billion over the next five fiscal years and increases the statutory limit on the public debt to $5.950 trillion. The second reconciliation act, the Taxpayer Relief Act of 1997 (H.R. 2014), contains tax cuts which partially are offset by revenue increases. The net effect of revenue changes in the Taxpayer Relief Act of 1997, coupled with several revenue provisions in the Balanced Budget Act of 1997 (most notably, an increase in the tobacco tax), is a revenue reduction of $95 billion.

President Clinton signed the two measures into law on Tuesday, August 5. The Balanced Budget Act of 1997 is Public Law 105-33 (111 *Stat.* 251); the Taxpayer Relief Act of 1997 is Public Law 105-34 (111 *Stat.* 788).

On Monday, August 11, President Clinton exercised his authority under the Line Item Veto Act to cancel one item of direct spending in the Balanced Budget Act of 1997 and two limited tax benefits in the Taxpayer Relief Act of 1997. These actions represent the first use of the line-item veto authority.

Cancellation of Limited Tax Benefits

Section 1027 of the Line Item Veto Act requires the Joint Tax Committee to prepare a statement for any revenue or reconciliation measure (amending the Internal Revenue Code of 1986) for which a conference report is being prepared, identifying whether such legislation contains any limited tax benefits. The conferees, at their discretion, may include the information from the Joint Tax Committee in a separate section of the measure, using a form prescribed by the Line Item Veto Act. If such a section is included in the measure, then the President may use the item-veto authority only against the limited tax benefits identified in the section; otherwise, the President may use the authority against any provision in the measure that he feels meets the definition of limited tax benefit provided in the act.

A total of 80 limited tax benefits were identified in the two reconciliation bills sent to the President. The conference report on the Balanced Budget Act of 1997 (H.Rept. 105-217) was filed on July 29. Section 9304 of the act identified one section as providing a limited tax benefit subject to the line-item veto (see the *Congressional Record* of July 29, 1997, vol. 143, no. 109, part II, at page H6140). That section, Section 5406, pertained to the tax treatment of certain services performed by prison inmates.

The conference report on the Taxpayer Relief Act of 1997 (H.Rept. 105-220) was filed on July 30. Section 1701, the last section of the measure, set forth a listing prepared by the Joint Tax Committee of 79 limited tax benefits subject to the line-item veto (see the *Congressional Record* of July 30, 1997, vol. 143, no. 110, part II, at pages H6490-91 and H6607-08).

President Clinton applied the line-item veto to two limited tax benefits in the Taxpayer Relief Act of 1997. The first, identified in his special message as Cancellation No. 97-1, canceled Section 1175 (Exemption for Active Financing Income) of the act. Cancellation No. 97-2 applied to Section 968 (Nonrecognition of Gain on Sale of Stock to Certain Farmers' Cooperatives) of the act. These provisions were identified in Section 1701 of the act as items 54 and 30, respectively, and dealt with the sheltering of income in foreign tax havens by financial services companies and the treatment of capital gains on the sale of certain agricultural assets.

Cancellation of Direct Spending Item

Unlike limited tax benefits, there is no special procedure for congressional identification of items of new direct spending. The cost estimate prepared by the Congressional Budget Office on the Balanced Budget Act of 1997 identified about a dozen accounts that had increases in direct spending for one or more fiscal years. Presumably, at least a dozen (if not dozens) of "items" of new direct spending are associated with these accounts.

President Clinton applied the line-item veto to one item of new direct spending in the Balanced Budget Act of 1997. Cancellation No. 97-3 applied to subsection 4722(c) (Waiver of Certain Provider Tax Provisions) of Section 4722 (Treatment of State Taxes Imposed on Certain Hospitals), a Medicaid provision involving New York State.